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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,843	03/31/2005	Frederic Noelle	38033	5413

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PEARNE & GORDON LLP
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EXAMINER

MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/529,843	Applicant(s) NOELLE ET AL.	
	Examiner Matthew D. Matzek	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/31/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. The declaration under 37 CFR 1.132 filed 2/16/2007 is insufficient to overcome the rejection of claims 1-3, 8 and 9 based upon Ferencz et al. as set forth in the last Office action because: claims 1-9 have been canceled and as such the rejection based upon Ferencz et al. has been withdrawn. Furthermore, the declaration fails to establish how the instant invention is materially and physically different from that of Ferencz et al., because it compares the instant invention to an article that is not commensurate in scope to that which has been applied in the now withdrawn rejections.

2. Claims 1-9 have been canceled. New claims 10-13 are currently pending. The new claims contain no new matter.

Claim Rejections - 35 USC § 102/103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 10 and 11 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ferencz et al. (US 7,091,140 B1).

a. Ferencz et al. teach the creation of a hydroentangled nonwoven fabric comprising fibers of 0.45-2.7 dtex (Abstract). Figure 12 illustrates strip tensile strengths that have a MD/CD ratio of less than 1.3 and have densities of less than 0.10 g/cm³. The fabrics of the applied invention have basis weights ranging from 34 to about 100 g/m² (col. 10, lines 1-7).

b. Although Ferencz et al. do not explicitly teach the claimed features of CD grab tensile of at least 1.3 Newtons per 50 mm per gram of nonwoven per m² and MD grab

tensile of at least 1.5 Newtons per 50 mm per gram of nonwoven per m², it is reasonable to presume that said properties are inherent to Ferencz et al. Support for said presumption is found in the use of like materials (i.e. a hydroentangled, spunbonded fabric of common basis weight). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of CD grab tensile of at least 1.3 Newtons per 50 mm per gram of nonwoven per m² and MD grab tensile of at least 1.5 Newtons per 50 mm per gram of nonwoven per m² would obviously have been present one the Ferencz et al. product is provided.

c. Claim 11 is rejected as the presence of process limitations on product claims, in which the product does not otherwise patentably distinguish over prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656. Both articles are spunbonded nonwovens and the applied art possesses at least some of the claimed physical properties.

d. Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to Applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292.

Claim Rejections - 35 USC § 103

4. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferencz et al. (US 7,091,140 B1).

a. Ferencz et al. teach a MD/CD strip tensile strength ratio of 1.1 in Figure 12. The MD/CD tensile strength ratio is a result-effective variable affecting the directional

strength of the spunbonded nonwoven. Consequently, absent a clear and convincing showing of unexpected results demonstrating the criticality of the claimed ratio, it would have been obvious to one of ordinary skill in the art to optimize this result-effective variable by routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977).

b. Although Ferencz et al. do not explicitly teach the claimed features of CD grab tensile of at least 1.3 Newtons per 50 mm per gram of nonwoven per m² and MD grab tensile of at least 1.5 Newtons per 50 mm per gram of nonwoven per m², it is reasonable to presume that said properties are inherent to Ferencz et al. Support for said presumption is found in the use of like materials (i.e. a hydroentangled, spunbonded fabric of common basis weight). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of CD grab tensile of at least 1.3 Newtons per 50 mm per gram of nonwoven per m² and MD grab tensile of at least 1.5 Newtons per 50 mm per gram of nonwoven per m² would obviously have been present one the Ferencz et al. product is provided.

c. Claim 11 is rejected as the presence of process limitations on product claims, in which the product does not otherwise patentably distinguish over prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656. Both articles are spunbonded nonwovens and the applied art possesses at least some of the claimed physical properties.

d. Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to Applicant to come forward with evidence establishing an

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unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292.

Response to Arguments

5. Applicant's arguments filed 2/16/2007 have been fully considered but they are not persuasive.

6. Applicant argues that Figure 12 of Ferencz et al. only teach values exceeding those in the amended claims. As pointed out in the rejection above, Ferencz et al. teach strength ratios as low as 1.1.

7. Applicant argues that Ferencz et al. teach the use of low and high pressure hydroentanglement but fail to teach the compaction, calendering and the like of the claimed invention and as such result in a structurally different article than the claimed invention. These methods of making the claimed invention have not been provided for in the instant claims. Furthermore, Ferencz et al. do in fact teach the use of thermal calendering and embossment (col. 7, lines 14-28) prior to entanglement. This method of making the nonwoven article is the same method of manufacture that Applicant as asserted provides their invention unique properties. Examiner continues to maintain his position that there is sufficient basis to assume that the claimed grab tensile values would be inherent to Ferencz et al. due to the common structure, physical properties and methods of making of the nonwoven article.

8. Applicant argues that the comparative example set forth in the Guichon declaration is substantially closer in structure to the claimed invention than any of the nonwovens in Ferencz et al. and shows the unexpected achievement of improved isotropy in the inventive nonwoven through filament concentration in the cross direction. It is noted that the feature upon which

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applicant relies (i.e., improved isotropy) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, the nonwoven densities of Test 1 and 2 are a factor of 10 lower than those of Ferencz et al. and only Test 2 meets the claimed MD/CD ratio, which Ferencz et al. do meet for claims 10 and 11. The Guichon declaration is ineffective in removing Ferencz et al. as prior art for the instant claims because the applied nonwoven has been manufactured in the same manner as asserted by Applicant in their invention and meets the density and MD/CD requirements of claims 10 and 11 and it would have been obvious to modify the applied invention to ascertain the invention of claims 12 and 13.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is 571.272.2423.


The examiner can normally be reached on M-F, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571.272.1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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